

## **COMMENTARY TO TECHNICAL AMENDMENTS TO LOCAL CIVIL RULE 5.7**

By administrative order entered January 2, 2002, this Court adopted two technical amendments to Local Civil Rule 5.7 regarding electronic case filing. The first is to conform the local rule to the requirements of newly amended Rule 6(e) of the Federal Rules of Civil Procedure, which became effective on December 1, 2001. The second is to clarify an ambiguity that has already caused confusion for some attorneys using the system.

### **1.**

Present Local Rule 5.7(h)(v) provides that the extra three-day period to respond to documents served by mail does not apply to documents served electronically. Amended Rule 6(e) of the Federal Rules, however, takes the opposite approach. It treats electronically served documents in the same way as documents served by mail and grants the extra three days of response time in both cases. The Committee Comment principally justifies this by saying that it will encourage attorneys to consent to electronic service.

Regardless of the rationale, our Local Rule is now in conflict with the Federal Rule and has been amended to conform, as follows:

#### **(h) Service of Electronically Filed Documents**

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(v) Effect on Time Computation. Electronic service under this rule is complete upon transmission. The additional three (3) days to do an act or take a proceeding after service of a document applies when service is made electronically, by virtue of Fed. R. Civ. P. 6(e).

### **2.**

Rule 5.7(d) requires that an attorney filing an affidavit also file a signed original. Some attorneys have asked whether this requirement applies to affidavits of service. The Court never intended that the requirement of a signed original apply to affidavits of service, which are routine filings. The concern is for a signed original related to affidavits in support of motions for summary judgment or preliminary injunction, or other affidavits with substantive evidentiary value. The rule has therefore been amended as follows:

#### **(d) Electronic Filing**

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(iii) Documents That May Be Filed Electronically if Accompanied by a Signed Original. The following documents may be filed electronically only if a signed original document is also filed and a copy served on all other parties:

- a. Affidavits in support of or in opposition to a motion (affidavits of service may be filed electronically without filing a signed original);
- b. Declarations under penalty of perjury;
- c. Certified copies of judgments or orders of other courts.

The electronically filed version of such documents must contain an “s/ \_\_\_\_\_” block indicating that the paper document bears an original signature.